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Crl.A.No. 31 OF 1999  
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Item No.101 Part-heard Court No.10 Section II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO. 31 OF 1999.@@  
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Nagappa Y. Padagi & Ors. ...Appellant(s)

Vs.

State of Karnataka ...Respondent(s)

Date:25/07/2002 This matter(s) was called on for hearing today.

CORAM:

HON'BLE MR.JUSTICE Y.K. SABHARWAL  
HON'BLE MR.JUSTICE SHIVARAJ V. PATIL

For the appellant(s) : Mr.NP Midha,Adv.  
Mr.Mohan V.Katarki,Adv.  
Mr.Ashok Kumar Sharma,Adv.

For the respondent(s) : Mr.Sudhir Walia,Adv.  
Mr.Satya Mitra,Adv.  
Mr.Sanjay R.Hegde,Adv.

UPON hearing counsel the Court made the following  
O R D E R

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.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J.R  
Mr.Sudhir Walia, the learned counsel for the State resumed his arguments at 10.30 a.m. and concluded at 12.15 p.m. when Mr.Midha, learned counsel for the appellants laid his submissions in reply upto 12.40 p.m.  
The appeal is dismissed in terms of the order.

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[Naresh Kumar]  
Court Master

[ VP Tyagi ]  
Court Master

[Signed order is placed on the file.]

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.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp  
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CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 31 OF 1999@@  
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Nagappa Y. Padagi & Ors. ...Appellants

Vs.

State of Karnataka ...Respondent

O R D E R@@  
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Nagappa Yallappa Padagi (A-1), Basappa Shivappa Padagi (A-2), Ningappa Shivappa Padagi (A-3), Satteppa Yallappa Padagi (A-7) and Basappa Kallappa Tolagi (A-6)] are appellants before us. They have challenged the judgment and order of the High Court convicting them for offences under Section 302/34, 307/34 and 436/34 and sentencing them to undergo R.I. for life, R.I. for five years and three years respectively for the other two offences. All the sentences were directed to run concurrently. By the said judgment and order the judgment of Additional Sessions Judge acquitting the appellants was reversed.

In the trial for offence under Section 302 and other offences before the Additional Sessions Judge in all there were 17 accused. The High Court by the impugned judgment and order, besides the appellants, also convicted Ningappa Yallappa Padagi (A-4) and Mukappa @ Yallappa Bhimappa Hukkeri (A-5) for the offence under Section 302/34 and other offences as noticed above. Smt. Basawwa (A-16) and Smt. Gangawwa (A-17) were also convicted by the judgment and

2

order of the High Court for offence under Section 323 IPC and were awarded simple imprisonment for one month. These four accused are not appellants before us in this appeal, as aforesaid, this appeal has been preferred only by the five appellants.

Briefly, the prosecution case is as follows:- A-7 and the deceased Bhimappa were friends. About four years prior to the incident the deceased took away Rudrawwa (PW4), the wife of A-7. Bhimappa took her to Goa and started residing with her. On the matter being taken up by A-7, the elder men of the village Basappa Sagehalli, Dr. Kulkarni (PW6) and others decided that accused No.7 should be given a sum of Rs.4000/- in order to facilitate him to perform second marriage. Mother of Bhimappa gave that amount to A-7. Thereafter Bhimappa returned to the village along with PW4 and started living in his house with her. There were frequent quarrels between A-7 and Bhimappa.

On 19.1.1987 at about 9.30 p.m. when PW5 and PW3 were sitting near a temple in their village, Bhimappa came and shouted and declared that he had killed Savantha, younger brother of A-7. Most of the accused belong to 'Padagi' family whereas deceased were from 'Ranoji' family. On coming to know of such a news, persons belonging to Padagi family came armed with axe and sickles to assault Bhimappa.

3

PW5 (Yallappa) tried to pacify them. He later took Bhimappa inside the house. PW1 Mahantesh and his friend

Fakirappa also went inside the house of the deceased. The accused were shouting to get the door of the house opened. Those inside the house did not open the door. Meanwhile, those who had gathered outside set the house on fire. The village accountant PW-7 Modinsab who was recently posted in the village about two months prior to the incident, on seeing the incident went to Post Office to contact the Police on telephone but could not do so as the telephone was out of order. He came to the outskirts of the village to go to the Police Station. On way he found PW32 PSI Sangana Basapa sitting in the jeep. He was informed of the incident. It was around 10.45 p.m.. PW32 contacted the Police Control Room by wireless communication to arrange for medical attendant and fire extinguisher etc. He also sent a communication to the Police Station and proceeded to the village along with PW7 where he found the house of Bhimappa engulfed in flames. Those belonging to Padagi family started running away on finding the Police. The Police was, however, able to apprehend A-1, A-2 and A-3 with their weapons, i.e., axe and sickle. PW32 suffered injuries in his hand while snatching sickle; he also sustained some burn injuries while attempting to extinguish the fire. PW5, PW6 and PW9 were found on the spot. On request of PW32, Dr.Kulkarni (PW6) provided first-aid

4

treatment to injured Mahantesh (PW1) and also to Mahadevi who later died in the hospital because of serious burn injuries.

As a result in the fire 10 people died on the spot. Their bodies were extricated after the fire was put off. PW1 and PW5 suffered burn injuries. PW2 also suffered certain injuries but not burn injuries. Other accused were arrested on various dates.

The prosecution in all examined 35 witnesses including eye-witnesses (PW1 to PW6, PW8 to PW12).

Additional Sessions Judge acquitted all the accused entertaining certain doubts about the time of occurrence, the date of the F.I.R. and the arrest of A-1 to A-3 from the spot along with the weapons.

The High Court, on the appeal filed by the State, convicted appellants and others as noticed hereinbefore.

The facts which stand established and have rightly not been disputed by Mr.Midha, the learned counsel for the appellants, may first be noticed as under:- (1) It was not a case of accidental fire, some persons had deliberately put the house on fire; (2) as a result of fire 10 persons

5

died on the spot and the 11th succumbed to injuries later; (3) some persons suffered burn injuries; (4) Bhimappa declared and shouted to have killed Savantha, younger brother of A-7, the said declaration enraged certain persons who had put the house on fire. Bhimappa had illicit relations with PW4- Rudrawwa, wife of A-7 and left the village with her and came back to village with her only after the matter was resolved in the manner indicated above.

On the aforesaid facts either established or admitted, the only dispute is as to who had put the house on fire. According to the defence version as culled out from the cross-examination of prosecution witnesses the house was put on fire by the crowd which had assembled to hear speech

in connection with the elections of the Panchayats which had to take place on 29.1.1987 and the members from that crowd had set the house on fire. The time of occurrence was not 10.30 p.m. It was 7 or 8 p.m. In support of this version the further case as culled out from the cross examination is that A-1 to A-3 were not arrested by PW32 on the spot but were in the jeep of the Police as they were coming back from the Police Station where they had gone to lodge the report against Bhimappa who had murdered Savantha which report was not recorded by the Police.

6

The High Court on thorough scrutiny of the evidence including those who were eye-witnesses came to the conclusion as aforesaid and reversed the judgment of Additional Sessions Judge acquitting the accused including the appellants. With the assistance of learned counsel for the parties we have also gone through the testimony of prosecution witnesses, in particular that of PW1 who had burn injuries and was inside the house during the fire, PW2 who is said to have been slapped by A-16 and A-17, it is in statement of PW2 that the F.I.R. was registered, PW3 who is said to have seen A1 to A6 setting the house on fire, PW4-Rudrawwa the eye-witness who names A-5,A-7, A-8 and A-10 and has also deposed about the arrest of A1 to A3 from the spot, PW5 who was injured witness having received burn injuries was inside the house and was pulled out during fire, PW6-Dr.Kulkarni who saw A5 and A7 setting the house on fire and has also deposed about the arrest of A1 to A3 in the manner claimed by the prosecution, he is the witness who also gave immediate medical aid as stated earlier, PW7 the village accountant who brought the police and PW9 also an eye-witness to the occurrence. Besides that we have also gone through the statement of PW32 - the police officer who first came along with PW7.

The presence of PW32 on the spot and his efforts to extinguish fire, to arrange for immediate medical aid and

7

informing the authorities for sending fire extinguisher and that A1 to A3 were in his jeep are all facts which stand fully established. In fact, in the judgment of acquittal the efforts of this witness have been appreciated and favourably commented upon but on other material aspects regarding the occurrence of the incident and arrest of A1 to A3 and the time of the occurrence have been doubted that resulted in acquittal of all the accused by court of Sessions. Learned counsel for the appellants at the very outset has referred and relied upon a decision in Kashmira@@ CCCCCCCC Singh v. State of Madhya Pradesh [AIR 1952 SC 159] for the@@ CCCCC CCCCCCCCCCCCCCCCCCCCCC proposition that where the murder is cruel and revolting it will be necessary to examine eye-witnesses and evidence with more than ordinary care, lest the shocking nature of the crime induce an instinctive reaction against a dispassionate judicial scrutiny of the facts and law. There can be no quarrel with this proposition but on perusal of the record and the two judgments we have no doubt that the High Court keeping in view these principles has very carefully examined the evidence. We have also thoroughly and minutely gone into the evidence and have given our serious and anxious consideration to the contentions urged.

It has been contended that the time of occurrence was not 10.30 p.m., but it was 7/8 p.m. For this purpose

reference was made to the time as given in the dying declaration- Ext.P.71 which was recorded at 6.20 a.m. on 20.1.87. There is overwhelming evidence that the house was put on fire as claimed by the eye-witnesses and therefore the time as given in the dying declaration by itself is of no consequence. Mr.Sudhir Walia, learned counsel for the State, has brought to our notice Ext.P.92 a copy of FIR in Crime No.52/87 relating to the murder of Savantha. The time of the murder of Savantha as mentioned in Ext.P.92 is 10 p.m. From the suggestion in the cross-examination of PW2 it also appears that according to defence version the murder of Savantha took place at about 9.30 p.m. If that is so, the question of house being set on fire before the said murder had taken place would not arise. Admittedly the house was set on fire on being enraged by the claim of Bhimappa that he had killed Savantha. Therefore, the very basis for the contention about the time of the occurrence loses the significance.

Regarding the doubt about the accused A1 to A3 being arrested from the spot in a way there is admission when it is claimed that these accused were in the jeep of the police. Though the version is different, namely that they were being brought back from the police station as the report about murder of Savantha was not recorded. The version was wholly based on assumption. We have no reason

to discard the reliable and the trustworthy testimony of the arrest of these accused as also to have any doubt on the testimony of PW32 in this regard. PW32, as is apparent from the record, is wholly trustworthy and credible witness who took considerable pain in efforts to extinguish fire and provide medical aid to the injured. The fact that one witness deposed that A1 to A3 were arrested from the roof is also of no consequence when considered in the light of other overwhelming evidence on record.

Much has weighed with the Sessions Court and great emphasis was laid by Mr.Midha as well on the aspect, namely, that the date of FIR in the remand application Ext.D-35 and other subsequent remand applications being mentioned as 19.1.87 whereas FIR was recorded on 20.1.87 on the basis of the statement of PW2 on 20.1.87 at 7.30 a.m. The High Court has rightly rejected the discrepancies by justly coming to the conclusion that it was only a mistake. Even otherwise it was nobody's case that the FIR was recorded on 19.1.87. Further the reading of the FIR makes it clear that it refers to the FIR Ext.P.1 recorded on Statement of PW2 recorded at 7.30 a.m. on 20.1.87.

The alternate submission was also made by learned counsel for the appellants that the witnesses had attributed specific role to A-5 and A-7 and, therefore, A1 to A3 deserve to be acquitted. We have no hesitation in

rejecting the contention on account of the overwhelming evidence against them as noticed by the High Court. We are in complete agreement with the view expressed by the High Court.

It was also contended that the view taken by the High Court was a reasonable view to take and, therefore, while deciding the State appeal against acquittal the High Court seriously erred in substituting its view for that of the Sessions Court. It is well settled that an appellate court has full power to review the evidence upon which the order of acquittal is founded though it is also true at the same

time where two views are reasonably possible, order of acquittal should not be restored. In this case, however, we are fully satisfied that the judgment of the Additional Sessions Judge was wholly erroneous and based on wrong assumptions and the view taken was not a reasonable one to take and hence it was a fit case which called for interference by the High Court. Therefore, High Court rightly reversed the judgment of Additional Sessions Judge and convicted the appellants. We find no merit in this appeal. It is accordingly dismissed.

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.....J.  
[ Y.K. SABHARWAL ]

.....J.  
[ SHIVARAJ V. PATIL ]

New Delhi,  
July 25, 2002.@@  
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